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PATENT DEPARTMENT (51851)
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WINSTON-SALEM, NC 27101

MAILED

JAN 24 2012

OFFICE OF PETITIONS

In re Application of Shahoian et al.	:	
Application No. 10/689,130	:	DECISION ON APPLICATION
Filed: October 20, 2003	:	FOR PATENT TERM ADJUSTMENT
Attorney Docket No. IMM151	:	

This is a decision responding to the "Request for Reconsideration of Patent Term Adjustment Determination" filed December 9, 2011, which is being treated as a petition under 37 C.F.R. § 1.705(b) requesting the initial determination of patent term adjustment be corrected from one thousand six hundred eleven (1,611) days to five hundred forty-one (541) days.

The petition is **granted**.

The Office has updated the Office's PALM database to reflect the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is 541 days. A copy of an updated PALM screen showing the correct determination is enclosed.

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the application advising Applicants of a patent term adjustment to date of 1,611 days. In response, Applicants timely filed the instant petition with payment of the issue fee.

Applicants indicate the Office improperly calculated a 1,031-day period of Office delay and a 39-day period of Office delay.

Issue 1

The 1,031-day increase in patent term adjustment was entered under 37 C.F.R. § 1.703(a)(4), which indicates the period of Office delay includes:

The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first[.]

In this case, the Office filed an examiner's answer within four months of the submission of the appeal brief. Therefore, the Office agrees the Office's entry of the 1,031-day increase in patent term adjustment was improper.

Issue 2

The 39-day increase in patent term adjustment was entered under 37 C.F.R. § 1.703(a)(5), which indicates the period of Office delay includes:

The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first[.]

The Board decision affirmed the examiner's rejection of all the pending claims. Therefore, the Office agrees the Office's entry of a 39-day increase in patent term adjustment was improper.

Conclusion

In view of the prior discussion, the correct patent term adjustment at the time of mailing of the notice of allowance is 541 days

Submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 C.F.R. §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 C.F.R. § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

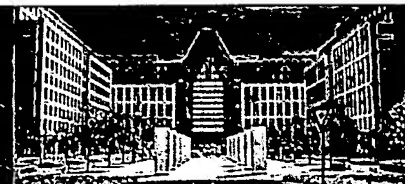


Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10689130

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[Explanation of PTA Calculation](#)

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PTA Calculations for Application: 10689130

Application Filing Date	10/20/2003	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	1611
A Delays	1611	PTO Manual Adjustment	-1070
B Delays	0	Applicant Delay (APPL)	0
C Delays	0	Total PTA (days)	541

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
89	01/24/2012		P028	Adjustment of PTA Calculation by PTO		1070	0
81	09/12/2011		MN/=.	Mail Notice of Allowance			0
80	09/11/2011		OAR	Office Action Review			0
79	09/11/2011		OAR	Office Action Review			0
78	09/11/2011		IREV	Issue Revision Completed			0
77	09/11/2011		DVER	Document Verification			0
76	09/11/2011		N/=.	Notice of Allowance Data Verification Completed			0
75	09/07/2011		EX.R	Reasons for Allowance			0
74	09/07/2011		CNTA	Allowability Notice			0
70	09/02/2011		FWDX	Date Forwarded to Examiner			0
71	08/16/2011		IDSC	Information Disclosure Statement considered			0
69	08/16/2011		A...	Response after Non-Final Action			0
68	08/16/2011		M844	Information Disclosure Statement (IDS) Filed			0
67	08/16/2011		C614	New or Additional Drawing Filed			0
66	08/16/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
65	05/23/2011	04/14/2011	MCTNF	Mail Non-Final Rejection	39		57
64	05/20/2011		OAR	Office Action Review			0
63	05/20/2011		CTNF	Non-Final Rejection			0
62	02/11/2011		FWDX	Date Forwarded to Examiner			0
61	02/11/2011		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
60	02/11/2011		RCEX	Request for Continued Examination (RCE)			0
59	02/11/2011		ABN9	Disposal for a RCE / CPA / R129			0
58	02/11/2011		BRCE	Workflow - Request for RCE - Begin			0
57	12/14/2010	02/17/2008	MAPDA	Mail BPAI Decision on Appeal - Affirmed	1031		41
56	12/13/2010		APDA	BPAI Decision - Examiner Affirmed			0
54	03/09/2009		AP_DK_M	Docketing Notice Mailed to Appellant			0
53	03/09/2009		APAS	Assignment of Appeal Number			0
52	12/16/2008		APWD	Appeal Awaiting BPAI Docketing			0
51	10/06/2008		ARBP	Appeal ready for BPAI review			0
50	06/07/2008		TCWD	Appeal ready for BPAI docketing			0
49	06/06/2008		MM327	Mail Miscellaneous Communication to Applicant			0
48	06/06/2008		M327	Miscellaneous Communication to Applicant - No Action Count			0
47	01/25/2008		TCRD	Return of Undocketed appeal to the TC			0
46	01/25/2008		PACC	Exam. Ans. Review Complete			0
45	01/09/2008		MAPEA	Mail Examiner's Answer			0
44	01/07/2008		APEA	Examiner's Answer to Appeal Brief			0
43	10/29/2007		APBR	Appeal Brief Review Complete			0
42	10/29/2007		FWDX	Date Forwarded to Examiner			0
41	10/17/2007		AP.B	Appeal Brief Filed			0
40	08/17/2007		N/AP	Notice of Appeal Filed			0
39	05/17/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
38	05/14/2007		CTFR	Final Rejection			0
37	03/06/2007		FWDX	Date Forwarded to Examiner			0
36	02/27/2007		A...	Response after Non-Final Action			0
35	11/29/2006		MCTNF	Mail Non-Final Rejection			0
34	11/27/2006		CTNF	Non-Final Rejection			0
33	09/21/2006		FWDX	Date Forwarded to Examiner			0
32	09/14/2006		A...	Response after Non-Final Action			0
31	06/14/2006	12/20/2004	MCTNF	Mail Non-Final Rejection	541		0.5
30	06/12/2006		CTNF	Non-Final Rejection			0
27	04/10/2006		DOCK	Case Docketed to Examiner in GAU			0
26	03/21/2006		DOCK	Case Docketed to Examiner in GAU			0
25	03/03/2006		DOCK	Case Docketed to Examiner in GAU			0
24	03/16/2005		DOCK	Case Docketed to Examiner in GAU			0
21	09/16/2004		DOCK	Case Docketed to Examiner in GAU			0

29	09/02/2004	IDSC	Information Disclosure Statement considered	0
23	09/02/2004	RCAP	Reference capture on IDS	0
22.7	09/02/2004	M844	Information Disclosure Statement (IDS) Filed	0
22	09/02/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
20	06/22/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
19	06/22/2004	DOCK	Case Docketed to Examiner in GAU	0
15	06/04/2004	WROIPE	Application Return from OIPE	0
14	06/04/2004	ROIPE	Application Return TO OIPE	0
13	06/04/2004	OIPE	Application Dispatched from OIPE	0
12	06/04/2004	COMP	Application Is Now Complete	0
17	05/21/2004	A.PE	Preliminary Amendment	0
11	05/21/2004	ADDFLFE	Additional Application Filing Fees	0
10	05/21/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
9	05/21/2004	CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems	0
8	05/21/2004	OSPECNFD	Omitted Specification Pages. Applicant has Petitioned that the Filing Date not be changed and the P	0
7	03/23/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
28	03/10/2004	IDSC	Information Disclosure Statement considered	0
18	03/10/2004	RCAP	Reference capture on IDS	0
16.7	03/10/2004	M844	Information Disclosure Statement (IDS) Filed	0
16	03/10/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
4	01/14/2004	L194	Cleared by OIPE CSR	0
3	01/14/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	12/05/2003	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/20/2003	IEXX	Initial Exam Team nn	0
0.5	10/20/2003	EFILE	Filing date	0

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